S.B. Civil Writ Petition No.4650/97
Harji Khan Vs. SBBJ & Ors.

Date of order : 17/08/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr. Kuldeep Aswal, for petitioner
Mr. O.P. Jain, for respondents

By the instant writ petition, the petitioner has prayed that the dispute be referred to the Labour Court for its adjudication.

The petitioner was employed in the State Bank of Bikaner & Jaipur at Nasirabad on 25th July, 1983 and according to him he worked upto 12th October, 1983 and the total period of working comes to of 80 days. According to him, his termination w.e.f. 13th October, 1983 is in violation of provisions of Industrial Disputes Act, 1947 [“the Act of 1947”] and application was filed before the Assistant Labour Commissioner-cum-Conciliation Officer and after he sent the failure report, the appropriate government failed to make a reference for adjudication before the Tribunal u/s.10(1) of the Act of 1947. In the absence of which, the petitioner was deprived to get his dispute adjudicated before the forum provided under the Act of 1947 and decision of the appropriate government is violative of Section 12(5) of the Act.

The respondents have filed reply to the writ petition wherein it has been averred that the petitioner had worked for 49 days from 25th July, 1983 to 12th September, 1983 as a Peon and it was fixed term appointment which came to an end by passage of time and no order with respect to termination was required to be passed.

It has further been submitted that after the union raised its grievance by filing application before the Assistant Labour Commissioner-cum-Conciliation Officer, it was pointed out that those who were at that time in the Bank were to be considered for regular selection and the petitioner will have an opportunity to participate in the regular recruitment, but when no compromise was arrived at, the failure report was sent by the conciliation officer. The appropriate government after examining the material on record and taking note of the statement made, stated that the process of selection has been initiated and such ex-temporary/temporary employees who had worked with the Bank not later than 31st July, 1987 are called for regular selection. The appropriate government considered in such fact situation that it is not a case where any dispute remains to be adjudicated. Consequently, decline to make a reference before the appropriate authority u/s.12(5) of the Act of 1947.

Only submission made by the counsel for petitioner is that once the grievance has been raised by the petitioner, the authority was under an obligation to make a reference for adjudication by the Tribunal as denial of same certainly violates his right under Article 14 of the Constitution of India. The petitioner has not been able to show that which provision of the Act of 1947 has been violated by the respondents and apart from it, once the respondents have took the decision to call such ex-temporary/temporary employees who had worked upto 31st July, 1987 for participating in the regular process of selection the opportunity in such circumstances is extended to the petitioner as well. Apart from it, the petitioner's services according to his own was dispensed with way back in 1983 and he has filed this present writ petition after inordinate delay in 1997, no explanation has been furnished thereof. In such facts and circumstances, I do not find any error in the decision taken by the appropriate government while passing the order dt.22nd February, 1988 [Ann.R/1].

The writ petition is, accordingly, dismissed with no order as to costs.

[Ajay Rastogi],J.

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